

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

PAUL MARTIN BLOYD

Plaintiff,

v.

BLANN TRACTOR CO., INC., and
RICKY LYNN WARE,

Defendants.

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CIVIL ACTION NO. ____

1:22-cv-125

DEFENDANT RICKY LYNN WARE'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Ricky Lynn Ware (herein after referred to as "Ware") pursuant to 28 U.S.C. §§ 1332 and 1441(a), gives notice to the Court of the removal of Cause No. 6303 from the 88th Judicial District Court of Hardin County, Texas to the United States District Court for the Southern District of Texas, Beaumont Division, as follows:

I. INTRODUCTION

This action involves a claim by Paul Martin Bloyd, Jr. (hereinafter "Bloyd" or "Plaintiff") for injuries he alleges he received from a motor vehicle accident that occurred on November 17, 2021 in Lumberton, Texas. Plaintiff's Original Petition at 2, attached hereto as Exhibit A. Plaintiff further alleges, "Defendant Driver failed to control his speed and smashed into the back of Plaintiff's vehicle, causing severe injuries and extensive damage. At all relevant times, Defendant Driver was acting in the course and scope of his employment with Defendant Company and acting in furtherance of a mission for that Defendant's benefit and subject to its control." *Id.*

Plaintiff filed his Original Petition in the 88th Judicial District Court of Hardin County, Texas under Cause No. 63063. *Id.* at 1. Mr. Ware was served with process by a private process

server in El Dorado, Arkansas on February 28, 2022. Affidavit of Service on Ricky Lynn Ware, attached hereto as Exhibit B-1. Defendant Blann Tractor Co., Inc. was likewise served by a private process server, in person, on the Texas Secretary of State. Affidavit of Service on Blann Tractor Co. Inc., attached hereto as Exhibit B-2. Neither of the Defendants have filed an answer in the 88th Judicial District Court of Texas.

II. REQUIRED INFORMATION

In accordance with Local Rule CV-81(c), information the Court requires to accompany this Notice of Removal is attached as an Appendix hereto and filed concurrently with the Notice.

III. GROUNDS FOR REMOVAL

A. Diversity of Citizenship

There is diversity of citizenship between Plaintiff Bloyd and Defendants. Further, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff's Original Petition asserts he received "severe injuries and extensive damage," and seeks damages for physical pain and mental anguish in the past and future, physical impairment, disfigurement, past and future medical expenses, and states he seeks monetary relief in excess of \$1,000,000. Plaintiff's Original Petition at 1-2, 9.

The party allegations of Plaintiff's Original Petition misnames the Plaintiff, but asserts that Plaintiff is "an individual residing in Texas." Ex. A at 1. Mr. Ware is an individual residing in El Dorado, Arkansas, as alleged in Plaintiff's Original Petition. *Id.* at 2. Defendant Blann Tractor Co. Inc. is a corporation organized under the laws of the State of Arkansas, with its principal place of business in Hampton, Arkansas. There is therefore complete diversity between Plaintiff and Defendants in this matter.

Accordingly, Mr. Ware is entitled to remove the action to this Court under Sections 1332 and 1441(a). 28 U.S.C. §§ 1332(a), 1441(a); *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1408 (5th Cir.1995).

III. CONCLUSION

Defendant Ricky Lynn Ware gives notice that Cause No. 63063 from the 88th Judicial District Court of Hardin County, Texas is hereby removed from Texas state court to the United States District Court for the Eastern District of Texas, Beaumont Division.

WHEREFORE, Removing Defendant prays that this Court take jurisdiction of this action to its conclusion and to final judgment to the exclusion of any further proceedings in the state court in accordance with law, and for any such other or further relief to which they may show themselves justly entitled.

Respectfully submitted,

ELLINGTON & ASSOCIATES

s/ Owen H Ellington

Owen H. Ellington

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ATTORNEYS FOR DEFENDANTS RICKY
LYNN WARE and BLANN TRACTOR CO.
INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was sent to the following counsel of record in accordance with the Federal Rules of Civil Procedure on this the ____ day of March, 2022:

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s/ Owen H Ellington
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